

No.

21-5836

ORIGINAL

Supreme Court, U.S.
FILED

SEP 23 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER WILSON - PETITIONER

VS

BURR CAIN, ET AL - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER WILSON # 114610

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QUESTION(S) PRESENTED

WHERE JUDICIAL OFFICERS KNOWINGLY MISREPRESENTED MATERIAL FACTS TO THE COURT AND JURORS ABOUT THE CASE THAT WERE FABRICATED BY "THE STATE'S EXPERT WITNESS" TO PROCURE A CONVICTION THAT DENIED AN ACCUSED OF HIS 14TH AMENDMENT CONSTITUTIONAL RIGHT "TO DUE PROCESS" AND THE APPELLATE COURT HAD GIVEN A FINAL DECISION TO AFFIRM SUCH CONVICTION, DOES THE DOCTRINE OF RES JUDICATA PRECLUDE REVIEW OF A 60(b)(6) MOTION TO VACATE FOR THE FRAUD IN A STATE COURT OF LAST RESORT

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

DAVID L. TESDELL

COURT APPOINTED DEFENDER

CHARLES C. GURDECK

ASS. DISTRICT ATTORNEY

LARRY O. LEWIS

TRIAL JUDGE

STEVEN T. HAYNE

STATE EXPERT WITNESS

LAURENCE Y. MELLEN

DISTRICT ATTORNEY

JEFFERY A. KLINGFUS

ASS. ATTORNEY GENERAL

JIM HOOD

FORMER ATTORNEY GENERAL

KENNETH T. GRIFFES

APPEALS COURT JUDGE

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
EDMONDS V. STATE, 955 So. 2d 787 (MISS. 2007)	
PARVIN V. STATE, 113 So. 3d 1243 (MISS. 20)	
HAZEL-ATLAS GLASS CO. V. HARTFORD-EMPIRE CO., SUPRA, 322 U.S. at 244, 64 S. Ct. at 1000	
THROCKMORTON V. U.S., 49 U.S. 61 25 L. Ed 93 (1878)	

STATUTES AND RULES

60 (b) (6): "THIS RULE DOES NOT LIMIT THE POWER OF A COURT TO ENTERTAIN AN INDEPENDENT ACTION TO RELIEVE A PARTY FROM A JUDGMENT, ORDER, OR PROCEEDING, OR TO SET ASIDE JUDGMENT FOR FRAUD UPON THE COURT "

14 AMEND. U.S. CONST.: "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW "

14 AMEND. U.S. CONST.: "NO STATE SHALL DENY TO ANY PERSON WITHIN IT'S JURISDICTION THE EQUAL PROTECTION OF THE LAWS "

OTHER

TABLE OF CONTENTS:

OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1, 2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
CONCLUSION	9

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

IV.

PETITION FOR WRIT OF CERTIORARI

Christopher Wilson, an inmate currently incarcerated at the South Mississippi Correctional Institution in Leakesville, MS and in pro se respectfully petitions this court for a writ of certiorari to review the judgment of the Mississippi Supreme Court.

I.

OPERATIONS BELOW

The decision by the Mississippi Court of Appeals denying Mr. Wilson's direct appeal is reported as *Wilson v. State*, 986 So. 2d 1004 (Miss. Ct. App. April 16, 2009). The Mississippi Supreme Court denied Mr. Wilson's 60(b)(6) motion to vacate for an extrinsic fraud upon the court on July 29, 2021. That order and Justices King and Kitchen's objections to that en banc order is attached at Appendix ("App.") at

VI.

JURISDICTION

Mr. Wilson's petition or 60(b)(6) motion was denied on July 29, 2021. Mr. Wilson invokes this court's jurisdiction under 28 U.S.C. sub sec. 1257, having timely filed this petition for a writ of certiorari within ninety days of the Mississippi's Supreme Court's judgment.

VII.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

M. R. C. P. 60 (b) (6) (SAVEREY CLAUSE)

This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.

VIII.

STATEMENT OF THE CASE

Over 70 years ago in Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra, 322 U.S. at 244, 64 S.Ct. at 1000 this Court held or explained that:

Federal Courts... long ago established the general rule that they would not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered. This salutary general rule springs from the belief that in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered. From the beginning there has existed along side the term rule a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against the judgments regardless of the term of their entry.

In United States v. Throckmorton, 98 U.S. 61 25 L.Ed 93 (1878) this Court held that fraud vitiates everything.

Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court. See Hazel-Atlas Glass Co.

This case presents the question of whether the doctrine of res judicata can be used by individual state courts to deny a 60 (b) (6) motion to vacate for fraud upon the court under the saving clause as announced in Hazel.

- 60 (b) (6) MOTION -

On April 21, 2021, petitioner sought relief from the judgment of his conviction and sentence in the Mississippi Supreme Court by filing a motion for leave to proceed in the trial court on a 60 (b) (6) motion to vacate or set aside his conviction and sentence for fraud upon the court under the saving clause, where, in two separate instances judicial officers of the trial court had engaged in egregious misconduct so as to deprive the defendant of his 14th Amendment Constitutional right to due process by procuring the conviction through the knowingly use of fabricated evidence that was misrepresented to the court and jurors as having been based upon scientific fact and from the deliberate withhold of material evidence that would show his innocence. see Exhibit (T)

On July 29, 2021, the Mississippi Supreme Court denied the motions to vacate for fraud upon the court under the saving clause of 60 (b) (6) by erroneously applying the doctrine of res judicata, citing *Roland v. State*, as authority. APPENDIX (A)

However, neither *Roland* nor the doctrine of res judicata are applicable in this case, as the state court has converted the 60 (b) (6) motions into an ineffective assistance of counsel claims in order to achieve the denial, and showed deliberate indifference to the claims presented in the 60 (b) (6) motions to vacate for the two separate instances of fraud upon the court.

Petitioner argues that such actions by the state court has deprived him of due process of law because under the saving clause of 60 (b) (6) a valid claim of fraud upon the court entitles one to review and relief sought.

Generally speaking, only the most egregious misconduct such as bribery of a judge or jurors or the fabrication of evidence by a party in which an attorney is implicated will constitute a "fraud upon the court" for purposes of "saving clause" excepting from requirement that motions for

from judgment be made within a reasonable time, motions whereby a party seeks to set aside the judgment for "Fraud upon the court" Fed. R. Civ. P. 60(d)(3); U.S. v. Throckmorton, 98 U.S. 61 25 L. Ed. 93 (1878); Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra, 322 U.S. at 244, 64 S. Ct. at 1000; also see "M.R.C.P. 60(b)(6), saving clause" which states:

"This rule does not limit the power of a court to entertain an independent action or to vacate or set aside a judgment for fraud upon the court." 60(b)(6)

The magnitude of this error is demonstrated by the objection to the courts en banc order, by Justices King and Kitchens see objections attached to the courts en banc order. see ~~APPENDIX~~ APPENDIX (B)

FABRICATED CONCLUSORY SHOT DISTANCES

During the trial the state presented the testimony of Steven T. Hayne, M.D., Hayne was accepted by the court as a forensic pathologist and allowed to render his opinion in the case.

Hayne testified that the defendant had deliberately shot and killed his girlfriend oppose to being an accidental, and concluded that the defendant had shot his girlfriend from a five feet muzzle to target distance while holding the shotgun at a 40° degree downward angle. (TR. 84, 21-29; TR. 85, 1-3; TR. 85, 12-17)

During his closing arguments, the prosecutor argued to the jurors that Hayne's conclusory shot distances were based upon scientific facts see (TR. 178, 10-16); (TR. 178, 26-29); (TR. 192, 17-24); (TR. 192, 17-24); (TR. 193, 1-7)

However, Hayne's testimony was completely contradicted by the states expert firearm examiner, Steve Byrd, who after being accepted by the court in his respective field, testified that he examined the shotgun but he could not cause it to discharge in order to establish a conclusive shot distance. see (TR. 93, 23-24)

Byrds testimony implies that Hayne had fabricated his conclusory shot distances as it would be impossible to obtain being that the firearm was damaged and non working and because the prosecutor had argued that Hayne's fabricated measurement estimations were based upon scientific fact he committed fraud upon the court as applicable to the saving

clause under 60(b)(6).

Therefore, review of this claim by writ of certiorari should be granted, along with any and all relief deemed just.

FABRICATING MATERIAL EVIDENCE

At the beginning of the trial, the prosecutor sought to introduce into trial a photograph of the deceased body of the defendant's girlfriend which also depicted the phone defendant retrieved from his girlfriend's mother's home after going and informing her of what had just transpired.

Defense counsel objected to the introduction and the following bench conference was held:

BY MR. TIDWELL: In that picture there appears to be a phone. And in the discovery it would appear that my client actually had to go to another home in order to use the phone. As I understand, that's the phone that he brought back from her mother's house. I don't want the jury misled but I also don't want to put the 'MONKEY' on the stand and showing a picture of the deceased with a phone.

BY MR. BERNICK: I CAN STIPULATE THE PHONE DIDN'T WORK.

BY MR. TIDWELL: OKAY, something like that. I just don't want --

BY THE COURT: All right. Let the record reflect that this is a stipulation between you. YOU CAN EXPLAIN THAT TO THE JURY ANY WAY YOU WISH ABOUT THE PHONE. I WILL ALLOW YOU TO -- (TR. 26, 15-28)

Petitioner argues here that the 911 call to the police evinced that the killing was accidental, but for the prosecutor and defense attorney to enter into an agreement to use deception and fabricate to the jurors that the phone didn't work was to do nothing more than cripple the defendant's accidental defense and convict and incarcerate one who was not only truthful but also innocent.

Petitioner also argues that the trial judge also engaged in the

fraud upon the court where the trial judge gave permission to the attorney to enter into an agreement to fabricate material evidence and at the same time, withhold the truth of the matter.

Petitioner further argues that this particular fraud upon the court was motivated by racial discrimination, where in the engagement of the fraud, the court appointed attorney referred to his own client as a monkey. (Tr. 26, 19-20).

The equal protection clause provides that "no state shall deny to any persons within its jurisdiction the equal protection of the laws." U.S. Const. Amend. 14 sec. 1. Its central purpose is to prevent the states from purposefully discriminating between individuals on the basis of race. *Washington v. Davis*, 426 U.S. 229, 239, 46 S.Ct. 2040, 2047 48 L. Ed. 2d 697 (1976)

Petitioner urges this Highest Court of Errors to issue the writ of certiorari to review the state court's erroneous en banc order where the defendant's court appointed attorney sold him out to the prosecution and caused the fraud upon the court to escalate to a hate crime.

REASONS FOR GRANTING THE PETITION

The Mississippi supreme court has entered a decision that is in conflict with the 14th Amendment of the U.S. Constitution and the U.S. Supreme Court on this same issue as announced in ~~Throckmorton~~ ~~United States v. Throckmorton~~

SCOPE OF COURTS TO UPHOLD THE CONSTITUTION

The 14th Amendment brooks no excuses or reasons for not enforcing its provisions of depriving a defendant in a criminal trial of due process by procuring convictions through fraud or fraud upon the court in the context of 60 (b) (6) saving clause. Therefore, to avoid future deprivations of due process, this court should clarify the fraud upon the court standard under *Throckmorton* that applies when an attorney engages in fraud upon the court.

In *Throckmorton*, this Court held:

There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments

There is an admitted exception to this general rule in case where, by reasons of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case, where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat, or where the attorney regularly employed corruptly sells out his client's interests to the other side, - these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the judgment or decree, and open the case for a new and a fair hearing. See Wells, Res Adjudicata, sect. 499; Pease v. Olney, 20 Conn. 544; Wierich v. De Zoya, 7 Ill. 385; Kent v. Richards, 3 Md. ch. 392; Smith v. Lowry, 1 Johns. (N.Y.) ch. 320; De Louis et al. v. Meek et al., 2 Iowa, 55.

In all these cases and many others which have been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting his case to the court. U.S. v. Throckmorton, at 15

Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, the court will not go again into the merits of an action for the purpose of detecting an annulling the fraud; ... likewise, there are few exceptions to the rule that equity will not go behind the judgment to interpose in the cause itself, but only when there was some hindrance besides the negligence of the defendant, in presenting the defense in the legal action. Throckmorton, at 16

Petitioner argues here that Throckmorton entitles that the Mississippi Supreme Court was wrong in its decision to deny his 60 (b)(6) motions to vacate the judgment of his August 10, 2005, murder (17)

conviction, not only because the court deceptively applied the Roland case ~~only~~ when the court converted petitioner's 60(b)(6) claims into ~~an~~ ineffective assistance claims, "which would allow the doctrine of res judicata to take effect, legally" but also where "without reason or cause" petitioner was deprived of due process when the court denied relief to a claim that was clearly reviewable as an extraordinary circumstance. See Beck v. Davis, 580 U.S. ____ 2017.

The 14th Amendment of the U.S. Constitution provides that no state shall deprive any person of life, liberty, or property except by due process of law. 14th Am. U.S.C.

In *Mooney v. Holohan*, 294 U.S. 133, 65 S.Ct. 340, 79 L.Ed. 791: This court explained in broad terms what constitutes a deprivation of due process.

Petitioner's papers are ineptly drawn but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the state authorities to obtain his conviction and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, at 8

In the motion to object to the court's order to deny the 60(b)(6) motion, the judge refers to the 60(b)(6) motion to vacate for fraud upon the court as a novel claim meaning ~~new~~, which indicates that the claim has never been presented before. Therefore, the claim should have been reviewed.

This case presents this court with an opportunity to clarify to the state courts that a filing of a 60(2)(b) motion to vacate or set aside a judgment or order for fraud upon the court can not be limited where it is directed by the judicial machinery itself. This court should also clarify that if the fraud upon the court circumstances gives courts the authority to vacate or set aside a judgment on its own motion. And lastly this court should also issue a statement of law declaring that converting a claim of fraud upon the court, "that is meritorious" into a lesser serious claim to purposely deny review is a deprivation of due process in itself and also an engagement in that which a petitioner seeks relief from. Absent intervention by this court, the Mississippi supreme court will continue to promote erroneous ruling in disregard of specific rules of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'J' shape with a loop at the end.

DATE: September 1, 2021